IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA CORP.; XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

OPPOSITION TO REQUEST THAT
MOTION TO DISMISS BE DEEMED UNOPPOSED

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING**, **LLC,** (hereinafter, "AWMR") and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

Today, co-Defendant Ecoterra filed a request that its Motion to Dismiss be deemed unopposed, incorrectly alleging that the time had passed for Plaintiff herein to file its opposition to its morion to dismiss. Because counsel has committed a basic error in his calculation of time, Plaintiff is forced to expend time and money in the filing of this opposition.

It has been well established by the local Rules that a party has 10 days from the filing of any motion to file an opposition thereto. *See Local Rule 7.1(b)*; "Unless within ten (10) days after the service of a motion the opposing party files written objection thereto, incorporating a

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memorandum of law, the opposing party shall be deemed to have waived objection".

The actual counting of the days however, is done by Fed. R. Civ. P. 6(a), which has clearly established that. . . . "When the period fo time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation". *Fed. R. Civ. P. 6(a).* A legal holiday is defined as any of those enumerated in the rule, plus "any other day appointed as a holiday by the President or Congress of the United States, or by the state in which the district court is held". *Id.*

Local Rule 5.1 further allows for three (3) extra days (the so called "mailbox rule") when filing electronically. "Parties receiving service by electronic means are entitled to three (3) additional days to respond pursuant to Fed.R.Civ.P. 6(e)". *See Loc. R. 5.1(e).*

Ecoterra filed its motion on August 23, 2007. Without counting the weekends and Labor Day, a legal holiday per the definition in the federal rule, the 10 days allotted to AWMR to answer will expire this Friday, September 7, 2007. Adding to that the three)3) additional mailbox rule days, the deadline for AWMR to file its opposition will be Wednesday, September 12, 2007, and not September 5, 2007 as counsel mistakenly alleged. Thus, no waiver of any kind has occurred. As previously stated, AWMR intends to file its opposition to Ecoterra's motion to dismiss, and will do so within the time allotted by the Rules, on or before September 12, 2007.

WHEREFORE, AWMR respectfully requests that the Court **DENY** Ecoterra's request to deem its Motion to Dismiss unopposed, and that it issue any further relief it deem just and proper under the law.

I HEREBY CERTIFY that on this same day, the present motion was filed with the Court's CM/ECF system, which will notify all counsel of record in this case.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 6th day of September, 2007.

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